

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARTIN J. CARTER and DEPARTMENT OF THE ARMY,
FORT MEADE, MD

*Docket No. 01-507; Submitted on the Record;
Issued November 5, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs, in its decision dated October 20, 2000, abused its discretion in refusing to reopen appellant's claim for merit review pursuant to 5 U.S.C. § 8128(a).

On January 13, 1998 appellant, then a 59-year-old supervisory transportation specialist, filed a notice of traumatic injury and claim for compensation (Form CA-1), alleging that on September 30, 1997 he sustained pain in his lower back when he was packing and cleaning his office as a result of a reduction-in-force. Appellant also filed a notice of recurrence of disability (Form CA-2a) on the same date, alleging a recurrence of an October 29, 1979 injury on September 30, 1997 noting that excessive physical work caused more pain in his back.

In a decision dated January 14, 1999, the Office denied appellant's claim, as it found that the evidence was insufficient to establish a relationship between the employment factor and the medical condition because the medical evidence of record did not show a connection between the claimed condition and the factors of employment, nor did appellant's treating physician provide a medical history consistent with appellant's accounts as to how the incident occurred on September 30, 1997.

By letter dated February 8, 1999, appellant requested an oral hearing.

In a decision dated September 20, 1999, the hearing representative found that appellant has not established that he sustained an injury in the performance of duty on September 30, 1997. The hearing representative noted that although the evidence established that appellant experienced a specific event occurring at the time, place and in the manner alleged, the evidence did not contain a reasoned medical opinion of causal relationship. Accordingly, the hearing representative noted that although the evidence established that appellant experienced a specific event occurring at the time, place and in the manner alleged, the evidence did not contain a reasoned medical opinion of causal relationship. Accordingly, the hearing representative affirmed the decision of January 14, 1999.

By letter dated September 25, 2000, appellant requested reconsideration. In support of his request for reconsideration, appellant submitted his reconsideration request letter, a list of objects he lifted and their weight and an August 13, 1999 medical report by Dr. Alessandro Olivi, a Board-certified neurosurgeon, which was in the record at the time the case was before the hearing representative.

In a decision dated October 20, 2000, the Office denied appellant's request, as it found that the evidence submitted in support of appellant's request for reconsideration was repetitious and insufficient to require review.

The Board's jurisdiction is limited to final decisions of the Office issued within one year of the filing of the appeal.¹ Since appellant filed his appeal on November 13, 2000, the only decision over which the Board has jurisdiction on this appeal is the October 20, 2000 decision denying appellant's request for reconsideration on the merits.²

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employee's Compensation Act,³ the Office regulations provide that a claimant may obtain review of the merits of the claim by submitting evidence or argument that (1) shows that the Office erroneously applied or interpreted a specific point of law, (2) advances a relevant legal argument not previously considered by the Office, or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁴

In the instant case, appellant submitted no new relevant or pertinent evidence. The claim for benefits was originally denied because appellant failed to submit medical evidence in support of a causal relationship. The list of objects that appellant lifted and appellant's letter do not constitute medical evidence which could show causal relation. The report of Dr. Olivi is duplicative of one already in the record at the time the hearing representative made her decision. Accordingly, the Office properly denied appellant's request for reconsideration on the merits.

¹ See 20 C.F.R. § 501.3(d)(2).

² See *Jacqueline M. Nixon-Steward*, 52 ECAB ____ (Docket No. 99-1345, issued November 3, 2000).

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

The decision of the Office of Workers' Compensation Programs dated October 20, 2000 is hereby affirmed.

Dated, Washington, DC
November 5, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member